

APPEAL NO. 010434

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 25, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the date of the alleged injury is _____; that the claimant timely reported his alleged injury to his employer; that the claimant did not make an election of remedies; and that the claimant did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury. In his appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's date-of-injury, notice, election-of-remedies determinations and, as such, we will not discuss those issues.

DECISION

Affirmed.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence, including the medical evidence, and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer determined that there was damage or harm to the physical structure of the claimant's body; however, she was not persuaded that the damage or harm was caused by the claimant's performance of repetitively traumatic activities at work. She was acting within her province as the fact finder in so finding. In addition, the hearing officer noted that she was discounting the causation opinion of Dr. B, the claimant's surgeon, because it was based upon a misapprehension of the amount of time the claimant spent in operating the overhead valves. The foundation of Dr. B's opinion was a proper basis for the hearing officer to consider in determining the weight and credibility she would assign to Dr. B's causation opinion. Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm her determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge